subject to any applicable legal restrictions,[81] we propose that licensees be permitted to acquire additional spectrum from other licensees.

81. We request comment on whether this sharing arrangement furthers the public interest in efficient use of spectrum and in maximizing competition in this market. Commenters addressing this issue should also indicate whether this proposed 10 MHz band segment approach would render the current applications mutually exclusive by limiting the amount of spectrum assigned to such an extent that viable service is not possible and all four applicants can not be accommodated. We propose to auction any additional spectrum that becomes available if any of the four current applicants fails to implement its proposal and we receive mutually exclusive applications for that spectrum. Also, if the Commission ultimately adopts the 10 MHz band segment approach, what uses for the lower 10 MHz of spectrum would be appropriate and how should it be licensed? Could a similar band segment approach be implemented if the Commission chose to assign only part of the usable bandwidth such as a total of 25 MHz?

82. We request overall comment on our band sharing proposal for licensing the four applicants, including whether the four applicants can be accommodated in 40 MHz, and on other alternative spectrum sharing approaches that could accommodate multiple entry in this service. If the record in response to this Notice clearly reveals that assignment of the lower 10 MHz would not result in an inequitable coordination burden among the licensees, we would re-consider defining the usable bandwidth as 2310-2360 MHz and the four 12.5 MHz band segment approach. We also request comment on how our band sharing proposal would impact individual satellite DARS receiver designs including the incorporation of the command signalling channels necessary for the satellite DARS operator to remotely tune the receivers to operate at various center frequencies.

83. Specific comment is also sought on how our band sharing approach would affect the location of telemetry beacons. The Supplemental comments suggest that each system operator reduce its bandwidth occupancy by 0.1 MHz to create two 0.2 MHz assignments adjacent to the edge of the usable bandwidth for location of telemetry beacons. In light of our proposed band sharing plan, however, we request comment on how location of telemetry beacons would be impacted if unlicensed spectrum is assigned to other licensees and a center frequency shift is necessary for each satellite DARS system. An alternative might be to locate all telemetry beacons at the lower edge of the 2310 - 2360 MHz band. Though this would put less of a constraint on the use of the upper 40 MHz of spectrum, an added constraint would be placed on any future licensee of the lower 10 MHz band. We request comment on this alternative and the appropriate location for telemetry beacons.

ii. Frequency Assignments

84. CD Radio proposes in its Supplemental Comments that, unless the licensees agree otherwise, each licensee shall be assigned the highest frequency assignment available on the date of launch of its first spacecraft. It further proposes that each licensee must notify the Commission of the specific frequency assignment it is using at the same time it certifies to the Commission it has met the milestone and launched its first spacecraft. DSBC asserts that the frequency assignment should be assigned on the date the applicant is authorized to commence construction.

85. The coordination process with Canada and Mexico will need to begin long before the first satellite DARS licensee certifies to the Commission that it has met the milestone requiring launch of its

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[81] E.g., 47 U.S.C. § 310.

spacecraft.[82] CD Radio's approach would therefore require satellite DARS licensees to begin coordination with Canada across the entire 2310 - 2360 MHz band since each licensee would not know in the interim which exclusive frequency assignment it must coordinate. This approach, we believe, would be overly burdensome for both the Commission and the licensees. We propose to authorize specific satellite DARS frequency assignments upon grant of satellite DARS licenses to begin construction. We propose to assign frequencies on the basis that, pursuant to our band sharing plan, each assignment is equally suitable for service. This approach would expedite the U.S./Canada coordination process and the implementation of U.S. satellite DARS systems. We request comment on our proposal to assign frequencies.

iii. Interim Frequency Assignments

86. CD Radio proposes in its Supplemental Comments that a satellite DARS system operator be permitted temporarily to occupy frequency assignments other than its own provided its transmissions can be reconfigured to use only its own frequency assignment upon launch of the satellite operated by the licensee assigned to the frequency. DSBC objects to this proposal in its reply comments. It asserts that while temporary use by the first operator(s) might avoid having frequencies lie fallow for a short time, prescribing temporary use may be disruptive and contrary to the public interest because the temporary operator could be faced with reducing its services, discontinuing its service to its customers, or seeking to utilize frequencies that are rightfully assigned to another licensee once the temporary spectrum is no longer available for use.[83]

87. It is unclear whether an interim assignment would be necessary to implement a satellite DARS system. We expect that the coordination of the individual satellite DARS licensed systems will proceed simultaneously according to our proposed milestone requirements and spectrum would not lie fallow during the coordination process. Also, in the event that one or more licensed systems are not implemented, and remaining spectrum is assigned to other licensees, we agree with DSBC that an interim assignment may be disruptive and contrary to public interest because of possible service interruption or reduction. We therefore propose not to authorize interim frequency assignments to satellite DARS licensees but request comment on this issue.

b. Financial Qualifications/Milestone Requirements

88. The Commission has historically imposed financial qualifications on applicants seeking to provide satellite based services. The huge costs involved in implementing satellite proposals have proven to be a significant obstacle to new entrants and have often led to unsuccessful and prolonged attempts to obtain financing while service to the public is delayed and other qualified applicants are precluded from participating.[84]

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[82] Although we specifically mention coordination with Canada and Mexico, we may need to coordinate with other countries depending on the final configurations of the satellite systems.

[83] DSBC Reply to Supplemental Comments at 4, fn. 9.

[84] See, e.g., National Exchange Satellite, Inc., 7 FCC Rcd 1990, (Com. Car. Bur. 1992), recon. 8 FCC Rcd 3 (1993); Rainbow Satellite Inc., Mimeo No. 2584 (Com. Car. Bur., released Feb. 14, 1985); United States Satellite Systems, Inc., Mimeo No. 2583 ( Com. Car. Bur., released Feb. 14, 1985) (domestic satellite licenses declared null and void for failure to begin implementation as required by license).

89. Two DARS applicants suggested financial qualification rules. CD Radio suggests that applicants be required to demonstrate their financial ability to proceed with construction, launch and operation of their proposed systems in accordance with an established schedule of milestones. While CD Radio suggests that each applicant submit the same financial information as that required from domestic fixed-satellite applicants, it is not clear at what point in the construction process that CD Radio intends to require satellite DARS licensees to obtain full financing. DSBC urges the Commission to adopt a financial qualification standard based on due diligence requirements identical to the one used in the Direct Broadcast Service.[85] DSBC argues that such a relaxed standard is appropriate because DARS is a new high-technology, high risk, capital intensive venture where it may be difficult to attract financial support.

90. Although we appreciate DBSC's concerns about the difficulty in obtaining financing for new, unproven ventures, our experience in licensing satellite system applicants that have not been able to raise sufficient funds to implement their systems makes us wary of adopting a standard that does not ensure that the public will be offered service in a timely fashion. We also believe that DARS applicants should not be held to the stricter standard imposed on applicants in the domestic fixed-satellite service. Because it appears that all pending applications can be granted if the Commission chooses to license the current applicants and not reopen the processing group, and that one licensee's pursuit of financial resources will not preclude another applicant from implementing its system, we see no need to require applicants to demonstrate full funding before we will award licenses. Rather, we propose to adopt a standard that will give applicants an additional year to arrange financing but will nonetheless assure that limited frequencies do not remain unused.[86] Pursuant to this standard, applicants may demonstrate financial qualifications in stages. In order to receive a license, we propose to require applicants to provide evidence of financial capability, through a balance sheet showing the funding, a commitment from a corporate parent if the applicant is relying on the parent for the funds, or showing estimated income or revenues anticipated from proposed operations.

91. In addition, we propose to require each satellite DARS licensee to show that, within one year of grant and in conjunction with its showing that it has commenced construction of its first satellite, it has firmly committed resources sufficient to cover the cost of construction, launch and one year's operation of its proposed system. This second demonstration is to be made in the same manner as that required of domestic fixed-satellite licensees. This will provide DARS licensees with a year to complete financing arrangements once they have a license in hand. In addition, the public interest will be served by bringing DARS service to consumers in a timely manner.

92. In addition to financial qualifications, strict adherence to milestones will assure that licensees are proceeding expeditiously with their plans and that scarce spectrum resources do not remain unused. Applicants filing supplemental comments, CD Radio and DSBC, suggest that licensees be required to begin construction of the first satellite within one year of license grant, begin construction of the second satellite, if applied for, within two years and have at least one satellite in operation within six years of grant. We are concerned that the final operational milestone of six years suggested by the applicants will not provide the Commission with sufficient control over the prompt implementation of satellite DARS systems. After a contract has been signed, the typical time required to complete construction of a space station is three years. Thus, if a licensee is actively pursuing its plans, its first satellite should be ready to launch within four years of license grant. Therefore, in addition to requiring

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[85] See 47 C.F.R. § 100.19(b).

[86] See e.g. Radiodetermination Satellite Service, 104 F.C.C. 2d 650 (1986) at paras 22-25; 47 CFR §25.141.

that licensees begin construction of their first satellite within one year, we propose a rule requiring launch and operation of the first satellite within four years of license grant and full operation of an entire satellite system comprised of more than one satellite within six years of grant. Such a schedule, together with the financial showing proposed, will allow careful monitoring of licensees' progress. We request comment on whether this tighter milestone schedule is appropriate. DARS licenses will be conditioned on meeting these milestones, licensees will be required to notify the Commission when they have met them, and failure to conform to this schedule will render the licenses null and void.

93. Under an auction-based procedure, given the substantial up-front payments expected, we assume that financial qualifications and construction milestones for licensees would be unnecessary. We seek comments on this assumption. The Commission's statutory authority directs it to include in auction rules performance requirements necessary to ensure that service is implemented promptly and spectrum is not warehoused.[87] Raising additional capital necessary to prevail in an auction creates additional pressure from investors to use licenses efficiently and intensively. We seek comment on whether the auction-based assignment procedure should include less stringent administrative requirements and supervision of progress in system implementation than do the other licensing options. We seek further comment on appropriate performance requirements for the auction-based option, and anti-warehousing and anti-trafficking rules appropriate in an auction environment.

3. Rules Applicable to a Licensing Approach Based on Auctions Procedures

94. If the Commission chooses to reopen the application cut-off window and if additional applications are filed that create a mutually exclusive situation, competitive bidding auctions would be a possible selection method. Section 309( j) of the Communications Act gives the Commission the authority to employ competitive bidding procedures to select licensees if certain factors are present. These factors include: 1) mutual exclusivity between applicants, 2) the principal use of the spectrum would be to provide subscription services, and 3) the use of auctions would further certain public interest objectives.[88] In this NPRM we propose rules that would enable us to use auctions as a licensing method for satellite DARS if that decision appears warranted.

95. In order to employ auctions in any given service, the Commission must determine if mutual exclusivity exists between applications. Although it does not appear on the existing record that the four current applicants are mutually exclusive,[89] if additional entities file, given the limited amount of spectrum available, i.e. 50 MHz, all applicants' proposals might not be able to be accommodated. We seek comment on whether, if the processing group were reopened, new applicants would file and whether these applications would result in a mutually exclusive situation.[90]

96. In addition, the Commission must determine if

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87 See 47 U.S.C. § 309(j)(4)(B).

88 47 U.S.C. § 309 (j). Implementation of Section 309 9(j) of the Communications Act Competitive Bidding, 9 FCC Rcd 2348 (1994) (Second Report and Order).

89 See discussion supra at paras 79-83.

90 See Second Report and Order, supra n. 88 at para. 19 where we stated that it was premature to determine whether mutual exclusivity will occur in the satellite DARS proceeding.

> ...the principal use of such spectrum will involve, or is likely to involve, the licensee receiving compensation from subscribers in return for which the licensee (i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or (ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate...[91]

The Commission has previously decided that auctions were authorized if at least a majority of the use of the spectrum would be for service to subscribers and in making this determination, we decided to look to classes of licenses and permits rather than at individual licenses.[92] With respect to satellite DARS, we tentatively conclude it is likely that the principal use of the spectrum will be to provide subscription based services.[93] We base this tentative conclusion on the proposals by the four current applicants, three out of four of whom propose subscription service. We request comment on this issue, including information from any potential applicants on the type of service they contemplate offering.

97. Further, we tentatively conclude, but ask for comment on this tentative conclusion, that a competitive bidding procedure could further the statutory public interest objectives we are obliged to consider.[94] These objectives include:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays:

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource and

(D) efficient and intensive use of the electromagnetic spectrum.[95]

98. First, a competitive bidding procedure for satellite DARS could permit this new technology to be rapidly introduced, particularly to those residing in rural areas without a wide range of terrestrial radio choices. We ask for comment on whether auctions would be a faster licensing process than other approaches such as lotteries or comparative hearings for mutually exclusive applications. Alternatively,

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91 47 U.S.C. § 309 (j)(2)(A).

92 Second Report and Order, supra, n. 88 at 2354.

93 See First Report and Order and Second Notice of Proposed Rule Making in ET Docket No. 94-32, FCC 95-47, 10 FCC Rcd. 4769 (1995).

94 47 U.S.C. §309(j)(2)(B).

95 47 U.S.C. § 309 (j)(3).

would licensing the four current applicants pursuant to rules proposed in this notice provide quicker service to the public than would auctions?

99. Second, the statutory policy objective of promoting economic opportunity by awarding licenses to a variety of entities including small businesses, and businesses owned by minorities and women, has been addressed in our auction rules in other services via bidding credits, installment payments and set-asides. We seek comment on how to address this directive in the context of satellite DARS. Third, an auction also would allow the public to recover the value of the spectrum resource. Finally, it could encourage efficient spectrum use and force bidding applicants to develop concrete and realistic business plans in the process of preparing bids. We note that the Commission, in its discretion under the 1993 Budget Act, could choose to utilize a lottery to issue satellite DARS licenses.[96] We seek comment on whether the factors that led the Commission to prefer lotteries over auctions for pending applications in existing services, such as concern about delay in licensing and equitable considerations in favor of existing applicants, are present here.[97]

100. If an auction is employed for satellite DARS, we anticipate conducting it pursuant to the general framework adopted in the Second Report and Order,[98] the Commission's rules,[99] and consistent

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[96] Omnibus Budget Reconciliation Act of 1993 § 6002 (e) (prohibiting the use of lotteries to issue licenses unless one or more applications for such license were accepted for filing before July 26, 1993).

[97] See Memorandum Opinion and Order, PP Docket 93-253, 9 FCC Rcd. 7387 (1994) (determining to use lotteries to award licenses for cellular unserved areas in which applications were filed prior to July 26, 1993).

[98] Supra n. 88.

[99] 47 CFR Part 1, Subpart Q.

with other Commission proceedings where auctions have been employed.[100] We also propose certain service specific parameters if we choose to auction this spectrum.[101]

101. In addition, if the Commission chooses the auction option, we also request comment on whether there are any ways within the context of competitive bidding procedures, that the investment of the four current satellite DARS applicants and accompanying equities in their favor could be recognized.[102] In designing auctions, the Commission has an obligation to enact payment schedules that prevent unjust enrichment.[103] Current DARS applicants' efforts and expenditures in the past may have lowered the cost of developing DARS service and increased consumer receptivity to DARS. Assuming this is so, new applicants will benefit from these efforts and expenditures. We seek comment about whether such benefits would cause unjust enrichment for new applicants if this spectrum were auctioned. We request comment on whether current DARS applicants could be given bidding credits equal to the estimated value of the benefits that they have created for new applicants or whether they could be permitted to use a system of installment payments to satisfy their commitments pursuant to an auction. We also seek comment on how the value of such benefits could be measured, and on their magnitude. We request comment on these possibilities and on any other procedures the Commission could employ and on the extent of our legal authority to do so. For example, we may provide a licensee up to a 15% discount and guaranteed license pursuant to the pioneer's preference provisions in Section 309(j)(13) if it qualifies for a preference. Below we seek comment on the pending pioneer's preference requests filed by DSBC, Primosphere and CD Radio.

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100 See, Narrowband PCS Third Report and Order in PP Docket No. 93-253, 9 F.C.C. Rcd. 2941 (1994) (establishing competitive bidding rules for narrowband Personal Communications Service), recon. Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 10 F.C.C. Rcd. 175 (1994). See also Order on Reconsideration in PP Docket No. 93-253, 9 F.C.C. Rcd. 5306 (1994). IVDS The Fourth Report and Order, PP Docket No, 93-253, 9 F.C.C. Rcd. 2330 (1994) (establishing rules for Interactive Video and Data Service). Broadband PCS Fifth Report and Order in PP Docket No. 93-253, 9 F.C.C. Rcd. 5532 (1994) (establishing competitive bidding rules for broadband Personal Communications Service); See also Order on Reconsideration, PP Docket No. 93-253, 9 F.C.C. Rcd. 4493 (1994); Fourth Memorandum Opinion and Order in PP Docket 93-253, 9 F.C.C. Rcd. 6858 (1994); Fifth Memorandum Opinion and Order in PP Docket 93-253 10 F.C.C. Rcd. 403 (1994). Second Report and Order in Gen Docket No. 90-314, 8 F.C.C. Rcd. 7700 (1993) (establishing the allocation and regulatory structure for Personal Communications Service), recon. Memorandum Opinion and Order, 9 F.C.C. Rcd. 4957 (1994). See also Order on Reconsideration in Gen Docket No. 90-314, 9 F.C.C. Rcd. 4441 (1994), on further recon. Third Memorandum Opinion and Order in Gen. Docket No. 90-314, 9 F.C.C. Rcd. 6908 (1994) FCC 94-265. See also, SMRS Second Report and Order and Second Further Notice of Proposed Rule Making in PP Docket No. 93-253, FCC 95-159 (released April 17, 1995) (proposing competitive bidding rules for licensing 900 MHz Specialized Mobile Radio service). 5 GHz First Report and Order and Second Notice of Proposed Rule Making in ET Docket No. 94-32, FCC 95-47, 60 Fed. Reg. 13102 (March 10, 1995) (proposing competitive bidding rules for the 4660-4685 MHz frequency band); Notice of Proposed Rulemaking in MM Docket No. 94-131, 9 FCC Rcd 7665 (1994) (proposing competitive bidding rules for MMDS and ITFS).

101 See 47 U.S.C. § 309(j)(4).

102 See discussion of Option 3, infra.

103 47 U.S.C. § 309 (j)(4)(E).

102. We propose to auction 50 MHz of downlink frequency segments[104] according to a band plan that we choose based on comments in this proceeding and we may also limit the number of segments on which a licensee may bid successfully.[105] Licenses would be national in scope. We propose that our rules on a band plan and spectrum cap be structured to allow flexibility in DARS system design while also ensuring competition among service providers. The size of the proposed spectrum blocks may be different for the auction based approach than for the approach based on spectrum sharing between the four current applicants.[106]

103. In addition, we tentatively conclude to use a single, simultaneous multiple round procedure to allow licensees to aggregate and/or substitute spectrum blocks. The International Bureau would announce the time and place of the auction and provide additional information to bidders by future public notice.

104. We propose to adopt the short-form application procedures, payment requirement, public notice procedures, and anti-collusion rules, and default and disqualification payment requirements set forth in Subpart Q of Part 1 of the Commission's rules.[107] We propose adoption of the standard upfront payment formula of $0.02 per pop-MHz, based on the number of 5-MHz blocks identified in the applicants' Form 175. Requiring applicants to make significant financial arrangements prior to participation helps assure that applicants take the licensing procedure seriously. In addition, upfront payments provide available funds for the collection of possible bid withdrawal and default payments. The formula proposed would result in an upfront payment of about twenty-five million dollars for a national license of 5MHz. We seek comment on whether this is an appropriate amount for an upfront payment for an auction of S-band spectrum. We also seek comment on whether and to what extent rules on upfront payments should include special consideration for the four current applicants.[108] We also ask whether the upfront payment should be reduced for small businesses.[109] Would such a large upfront fee impose a significant barrier to entry to these auctions that it would be contrary to the directives of Section 309(j) regarding opportunities for small businesses or, as discussed below,[110] should a substantial upfront payment be imposed to ensure that applicants are financially qualified to acquire a DARS license and to construct and operate a DARS system?

105. Section 309(j) of the Communications Act also provides that, when promulgating competitive bidding regulations, the Commission must "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity

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104 See para 31, supra.

105 See discussion supra at para 39.

106 Id.

107 47 C.F.R. Part 1, Subpart Q. See Second Report and Order in PP Docket 93-252.

108 See discussion infra at para 101 re possible auction preferences for the current applicants.

109 See discussion on designated entities infra at para 107-108.

110 Id.

to participate in the provision of spectrum-based services."[111] To implement the statute's provisions concerning these "designated entities," the Commission specified several possible measures, including installment payments, bidding credits and spectrum set-asides, to choose from when establishing competitive bidding procedures for particular services. [112]

106. In the Competitive Bidding Second Report and Order, we also indicated that special measures for such entities may not be appropriate in all circumstances. For example, we stated that installment payments should not be available for all spectrum auctions. Rather, in order to match such measures with eligible recipients (i.e., small businesses), installment payments would only be available for certain licenses that do not involve the largest spectrum blocks and service areas. We did not want to delay service to the public by encouraging under-capitalized firms to receive licenses for facilities which they lack the resources adequately to finance.[113] In addition to installment payments, we also indicated that, in service-specific rules, we may determine that bidding credits are necessary to provide designated entities the opportunity to bid successfully for a license. This determination, we stated, would "rest in whole or in part on our assessment of the available opportunities in, and characteristics of, a specific spectrum-based service." [114]

107. We note further that, as discussed above, Section 309(j)(3) also requires the Commission to promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including designated entities.[115] The statute, however, directs the Commission, in specifying auction procedures, to pursue other objectives: "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays" and of promoting "efficient and intensive use of the electromagnetic spectrum." [116]

108. In light of the above discussion and the Commission's previous determination in another satellite service,[117] we seek comment on how the Commission can strike a proper balance in the public interest among the statutory objectives if competitive bidding is used for licensing satellite DARS. In particular, we seek comment on what, if any, special measures for designated entities are necessary in this service to achieve each of the statute's objectives. In this regard, parties should comment on appropriate

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111 47 U.S.C. § 309(j)(4)(D); § 309(j)(3)(B), (j)(4)(A).

112 See Second Report and Order, supra. n. 88 at paras. 227-288.

113 Id. at para 237, citing 47 U.S.C. § 309(j)(3)(A). In addition, the legislative history explaining the designated entity provisions of the auction statute states that "the characteristics of some services are inherently national in scope, and are therefore ill-suited for small businesses." H.R.Rep. No. 111, 103d Cong., 1st Sess. 254 (1993).

114 Second Report and Order, supra. n. 88 at para. 242.

115 47 U.S.C. § 309(j)(3)(B)

116 Id. § 309(j)(3)(A), (D).

117 See Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 Mhz Frequency Bands, Report and Order, CC Docket 92-166, 9 FCC Rcd 5936, 5969-70 (1994).

eligibility criteria for such measures. Specifically, if installment payments are adopted for small businesses, we invite comment on the appropriate definition of "small business," taking into account the likely capital requirements for DARS licensees and the other characteristics of the service.[118] We also request comment on whether to implement a bidding credit program for satellite DARS. In connection with any measures for designated entities, commenters should also address means of preventing unjust enrichment through trafficking of licenses.[119]

109. We propose that each applicant would be required to specify on its Form 175 its status as a designated entity (if applicable), the frequency blocks applied for, and the persons authorized to place or withdraw bids. Applicants would have to identify any arrangements or agreements with other parties relating to the licenses that are subject to auction. The timing and duration of auction rounds would be determined by the International Bureau and announced by public notice. This notice would include information on the size of bid increments, activity rule, and stopping rules, and the proposed end of an auction after a specified number of rounds.

110. We propose to employ bid withdrawal and default rules similar to prior auctions. At the conclusion of the auction, winning bidders would be required to supplement their upfront payments and file their long-form applications pursuant to our rules on satellite applications.[120] Applicants would have 30 days to file their long form applications and when these are filed, the International Bureau would issue a public notice announcing the acceptance of the applications for filing.

111. Finally, recognizing that we have not yet identified specific frequencies for feeder links in this service,[121] we request comment on whether auctionable satellite DARS spectrum segments should include accompanying feeder link spectrum.[122] The Commission has previously concluded that service used as part of end-to-end subscriber based offerings would meet the statutory criteria for auctions. While the Commission decided in its Second Report and Order in the Competitive Bidding rulemaking proceeding, not to auction intermediate links, including feeder links in the Mobile Satellite Services (MSS), it appears that this determination was based not on the failure of such services to meet the principal use test, but on the finding that auctions for intermediate links would not achieve the public interest objectives in 309(j)(3).[123] We tentatively conclude, however, that mutually exclusive applications

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118 See 47 C.F.R. § 1.2110(b)(1).

119 See 47 U.S.C. § 309(j)(4)(E).

120 See 47 C.F.R. § 25.114.

121 See discussion, supra re feeder links at paras 70-75.

122 In our Competitive Bidding NPRM, the Commission proposed to use auctions for mutually exclusive license applications in FSS bands and also proposed that licenses for frequencies used as "intermediate links" for the provision of a continuous, end-to-end service to subscribers would be subject to competitive bidding. See Notice of Proposed Rulemaking, PP Docket No. 93-253, 8 FCC Rcd. 7635, 7661, 7639 (1993).

123 See Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348, 2355-56 n. 30 (1994); 47 C.F.R. §1.2102(b)(4). While the Commission's auction rules do not specifically indicate if FSS spectrum, whether used for feeder links or for subscriber-based services, may be auctioned, it can reasonably be inferred from the determination regarding MSS feeder links, and intermediate links in general, that the Commission

for feeder link spectrum for satellite DARS would satisfy the principal use test and the public interest objectives in the competitive bidding statute. We seek comment on this tentative conclusion and whether feeder link spectrum should be auctioned separately or in conjunction with the S-band frequencies. We also seek comment on whether auctions would apply to feeder links for satellite DARS if a mutually exclusive situation arises with other users of this spectrum, for example fixed satellite services or broadcast auxiliary services. Commenters should also take into consideration our previous discussion of feeder links in this NPRM.

4. Pioneer's Preference Requests

112. DSBC, Primosphere and CD Radio each have pending satellite DARS pioneer's preference requests in GEN Docket No. 90-357. CD Radio's request, filed July 30, 1991, and its supplemental request, filed January 23, 1992, were placed on public notice January 31, 1992 and assigned file number PP-24. CD Radio's second supplemental request and the requests of DSBC and Primosphere, each of which were filed June 2, 1993, were not placed on public notice. We are associating CD Radio's second supplemental request with file number PP-24 and are assigning file number PP-86 to DSBC's request and file number PP-87 to Primosphere's request, all in GEN Docket No. 90-357.

113. In the Notice of Proposed Rulemaking and Further Notice of Inquiry in GEN Docket No. 90-357,[124] we deferred consideration of pioneer's preference requests because we found that DARS technology was rapidly evolving, but was not yet fully developed. In the Allocation Order,[125] we continued to defer action on pioneer's preference requests because we were conducting a review of the pioneer's preference rules in ET Docket No. 93-266 to assess the preference program following the enactment of competitive bidding authority.[126] In the Second Report and Order and Further Notice of Proposed Rule Making in ET Docket No. 93-266,[127] we adopted new rules and procedures for pioneer's preference requests, which are applicable to the pending DARS requests. We have recently amended our pioneer's preference rule to implement Section 309(j)(13) of the Communications Act which was added by legislation implementing the General Agreement on Tariffs and Trade (GATT).[128] These new rules will also apply to the pending satellite DARS requests. Accordingly, DSBC, Primosphere, and CD Radio will be required to amend or supplement their pioneer's preference requests to bring them into compliance with the new rules.[129]

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intended that FSS spectrum used for feeder links would not be subject to auctions.

124 7 FCC Rcd. 7776, 7781 n. 15 (1992).

125 Allocation Order, supra. n. 1 at n. 8.

126 See Notice of Proposed Rule Making, ET Docket No. 93-266, 8 FCC Rcd. 7692 (1993); First Report and Order, ET Docket No. 93-266, 9 FCC Rcd. 605 (1994) (deferring decision whether to apply our existing or new pioneer's preference rules in proceedings where tentative pioneer's preference decisions had not been issued), recon. denied, 9 FCC Rcd. 6837 (1994).

127 FCC 95-80, released March 1, 1995 (petition for reconsideration pending).

128 Third Report and Order, ET Docket No. 93-266, 95 FCC 218 (released June 8, 1995).

129 See id. at para. 22.

114. Under our revised rules adopted in the Second Report and Order in ET Docket No. 93-266, pioneer's preference requests complying with our acceptability requirements and procedures "will be accepted for filing and listed by file number in a notice of proposed rulemaking addressing the new service or technology proposed in the request." 47 C.F.R. § 1.402(d). Because each of the requests referenced above appears to be acceptable for filing, we herein solicit comment on these requests. Pursuant to Section 1.402(e) of the Commission's rules, 47 C.F.R. § 1.402(e), parties wishing to comment on any of these three pioneer's preference requests should file comments separate from any comments filed on the rules proposed in this Notice and should reference both the appropriate pioneer's preference file number(s) and GEN Docket No. 90-357 on the cover page of their comments.

5. Miscellaneous Issues

115. These issues are generally associated with our analysis of the four current applicants but we seek comment on which might be applicable to licenses awarded pursuant to auctions. As a non-common carrier/subscription service, DARS licensees would not be subject to the foreign ownership restrictions of the Communications Act.[130] However, licensees providing broadcast services would be covered by these restrictions and would thus be limited in the amount of foreign investment they could attract. We request comment on whether foreign ownership restrictions should apply to any DARS licensees, to all DARS licensees or only to those DARS licensees proposing broadcast services.

116. We propose that licenses for DARS space segment facilities would be issued for ten years.[131] We note that Primosphere proposes to offer broadcast services. Broadcast licenses are limited to seven years.[132] We seek comment on whether the license term we select should differ based on the operational classification of the service or on whether licenses are granted through a competitive bidding process. In addition, we propose that the license term would begin when each satellite is launched and put into operation. We propose that receivers would not be licensed. In addition, we propose that licensees in this service will be required to file reports with the Commission on an annual basis and provide information similar to that required of domestic fixed-satellite operators regarding transponder loading and general satellite operation.

117. The Recording Industry Association of America (RIAA) has filed comments asking the Commission to impose conditions on licensees requiring them to secure license agreements from copyright owners of the sound recordings they intend to transmit. We do not believe that it is appropriate for this Commission to address copyright issues in the context of proposing DARS service rules. We would expect, however, that DARS licensees will comply with all applicable copyright laws and if they do not, copyright owners have appropriate legal remedies available to them.[133]

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130 47 U.S.C. § 310(b) provides that foreign ownership restrictions apply to broadcast and common carrier licenses. DARS licensees would, of course, be subject to § 310(a) restrictions that prohibit grant of a license to a representative of a foreign government.

131 See 47 C.F.R. § 25.120.

132 47 U.S.C. § 307(c).

133 See Title 17 U.S.C. We note that Primosphere in its application pledges to comply with the intellectual property obligations applicable to broadcasters.

118. Because the U.S. is the only country in Region 2 with an allocation of S-Band frequencies for DARS, licensees can only provide domestic service. As discussed above, significant international coordination issues exist in this band and thus it would be impractical to permit international service.

119. National Public Radio (NPR) suggests that the Commission establish an Industry Advisory Committee (IAC) to guide the nature and continuing development of proposed DARS system diversity. While there are substantial technical and regulatory issues that must be resolved as a result of the differences among the four satellite DARS proposals, we do not believe an IAC is necessary in this instance. We believe that we have sufficient flexibility to craft service rules that will accommodate diverse satellite DARS systems. We request comment on whether an IAC would be appropriate in this proceeding if we proceed with licensing the four current applicants.

120. As we provided in our Allocation Order, the mobile and radiolocation services are allocated primary use of the 2310-2360 MHz band until January 1, 1997 or until the first Broadcasting Satellite (sound) system is brought into use. After that time, mobile and radiolocation use of the band would be permitted only on a secondary basis. It was also noted in the Allocation order that, of particular importance, the aeronautical telemetry community supported the reaccommodation of existing aeronautical telemetry users of the 2310-2390 MHz band to the 2360-2390 MHz band. The Allocation Order further noted that when service rules are adopted for satellite DARS, the frequencies allocated for space telecommand in the 2310-2360 MHz band may also need to be reaccommodated.

121. Modification to Part 87 (Aviation Services) of our rules therefore would be consequential to the licensing of satellite DARS systems in the 2310-2360 MHz band. Specifically, our proposal to modify Part 87 can be found in Appendix II. We seek comment on this proposal and we seek comment on any additional modifications to Part 87 that may be necessary.

## III. CONCLUSION

122. Based on the considerations discussed above, we conclude that the proposals set forth in this Notice will facilitate the implementation of DARS in the United States. We seek comment on all aspects of these service rules and anticipate an extensive record on which to base decisions on final regulations

## IV. PROCEDURAL MATTERS

123. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a). The individual satellite DARS applications and pioneer's preference proceedings are restricted proceedings, to the extent that any party has formally opposed an application or pioneer's preference request. Ex parte presentations concerning any formally opposed application or request are prohibited. See 47 CFR § 1.1208.

124. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix III. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

125. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before September 15, 1995 and reply comments on or before October 13, 1995. To file formally in this proceeding, parties must file an original and five copies of all comments, reply comments, and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, room 239. For further information contact Rosalee Chiara or Ron Repasi at (202) 739-0735. Parties filing comments on the pioneer's preferences requests must file comments separate from those on the rules proposed in this notice and reference both the file numbers and the General Docket No. 90-357. For further information on pioneer's preference requests contact Rodney Small at (202) 776-1622.

## V. ORDERING CLAUSES

126. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and 154(j), 157, and 309(j), NOTICE IS HEREBY GIVEN of the proposed amendments to Part 25 of the Commission's Rules, 47 CFR Part 25, in accordance with the proposals in this Notice of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals.

127. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

## APPENDIX I

**Proposed Rules and Regulations to be Added to 47 C.F.R. Part 25 of the Commission's Rules**

1. The Table of Contents for Part 25 is revised to read as follows:

## PART 25 - SATELLITE COMMUNICATIONS

### Subpart A - General



### Subpart B - Applications and Licenses



### EARTH STATIONS

## SPACE STATIONS



## PROCESSING OF APPLICATIONS



## FORFEITURE, TERMINATION, AND REINSTATEMENT OF STATION AUTHORIZATION



## Subpart C - Technical Standards

## Subpart D - Technical Operations



## Subpart E - Developmental Operations



## Subparts F-G -- [Reserved]

## Subpart H - Authorization to own stock in the Communications Satellite Corporation



## Subpart I -- Equal Employment Opportunities

2. The authority citation for Part 25 continues to read as follows:

**AUTHORITY: Sections. 101-404, 76 Stat. 419-427; 47 U.S.C. 701-744, Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.**

3. Section 25.114 is amended by revising paragraph (c)(18), to read as follows:

**§ 25.114. Applications for space station authorizations.**

* * *

(c) * * *

(18) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications for domestic fixed-satellite systems and mobile-satellite systems shall provide the financial information required by § 25.140(b)-(e), § 25.142(a)(4), or § 25.143(b)(3), as appropriate. Applications for satellite DARS systems shall comply with the requirements of § 25.144(b)(3). Applications for international satellite systems authorized pursuant to Establishing of Satellite Systems Providing International Communications, 50 FR 42266 (October 18, 1985), 101 FCC 2d 1046 (1985), recon. 61 RR 2d 649 (1986), further recon. 1 FCC Rcd 439 (1986), shall provide the information required by that decision.

4. A new Section 25.144 is added to read as follows:

**§ 25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.**

(a) Definitions

(1) "System" The term "System" refers to the constellation of one or more satellite DARS space stations, the feeder link earth station(s), and the mobile, fixed and/or portable receivers.

(2) "Allocated bandwidth." The term "allocated bandwidth" refers to the entry in the Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more terrestrial or space radiocommunication services or the radio astronomy service under specified conditions. This term shall be applied to the 2310-2360 MHz band for satellite DARS.

(3) "Frequency Assignment." The term "frequency assignment" refers to the authorization given by the Commission for a radio station to use a radio frequency or radio frequency channel under specified conditions.

(b) Qualification Requirements:

(1) General Requirements: Each application for a system authorization in the satellite digital audio radio service in the 2310-2360 MHz band shall describe in detail the proposed satellite digital audio radio system, setting forth all pertinent technical and operational aspects of the system, and the technical, legal, and financial

qualifications of the applicant. In particular, satellite DARS applicants must file information demonstrating compliance with § 25.114 and all of the requirements of this section.

(2) Technical Qualifications: In addition to the information specified in (b)(1), each applicant shall:

(i) identify the service link margin of its satellite DARS system and demonstrate that its system will, in a mobile environment under clear sky conditions, provide that service link margin to the geographical areas it intends to serve;

(ii) demonstrate that its satellite DARS system is capable of remotely tuning its individual mobile, fixed, and/or portable receivers across the allocated bandwidth 2310-2360 MHz and demonstrate how it will implement the forward signalling command for its receivers to select and tune to any center frequency(ies) in the allocated bandwidth;

(iii) identify the coding scheme and coding rate it will use to transmit CD quality audio. If applicable, the applicant shall identify any other audio format(s) it will provide to its end users as well as their associated coding scheme and coding rates. If audio formats which are less than CD quality will be provided, it shall demonstrate that it is capable of transmitting those audio formats at variable data rates which are less than those necessary to produce CD quality audio;

(3) Financial Qualifications:

(i) Each applicant for a space station system authorization in the 2.3 GHz satellite digital audio radio service must demonstrate, on the basis of a detailed business plan, how it proposes to meet the estimated costs of the construction and launch of its proposed space station(s) and the estimated operating expenses for one year after the launch of its space station(s).

(ii) Within one year of license grant, licensees are required to demonstrate full financing of their systems in the form specified in §§ 25.140(c) and (d). In addition, applicants relying on current assets or operating income must submit evidence of a management commitment to the proposed satellite system. Failure to make such a showing will result in the dismissal of the application.

(c) Milestone Requirements.

(1) Each applicant for system authorization in the satellite digital audio radio service must demonstrate within 10 days after a required implementation milestone as specified in the system authorization, and on the basis of the documentation contained in its application, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the

milestone has been met. This showing shall include all information described in § 25.140 (c), (d) and (e) of this part. The satellite DARS milestones are as follows, based on the date of authorization:

(i) One year: Complete contracting for construction of first space station or begin space station construction.

(ii) Two years: If applied for, complete contracting for construction of second space station or begin second space station construction.

(iii) Four years: In orbit operation of at least one space station.

(iv) Six years: Full operation of the satellite system

(d) Reporting requirements. All operators of satellite digital audio radio service systems shall, on June 30 of each year, file a report with the International Bureau and the Commission's Laurel, Maryland field office containing the following information:

(1) Status of space station construction and anticipated launch date, including any major problems or delay encountered;

(2) A listing of any non-scheduled space station outages for more than thirty minutes and the cause(s) of such outages;

(3) Identification of any space station(s) not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

6. A new paragraph is added, in alphabetical order Section 25.201 to read as follows (addition of this paragraph to Section 2.1 is consequential):

**§ 25.201 Definitions**

* * * *

*Satellite Digital Audio Radio Service ("DARS").* A radiocommunication service in which compact disc quality audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations.

* * * *

7. Section 25.202 is amended by adding a new paragraph (a)(6), as follows:

**§ 25.202. Frequencies, frequency tolerance and emission limitations.**

* * *

(a) * * *

(6) The following frequencies are available for use by the satellite digital audio radio service:

2310-2360 MHz: space-to-Earth (primary)

8. A new Section 25.214 is added to read as follows:

**§ 25.214 Technical requirements for space stations in the satellite digital audio radio service.**

(a) Each system authorized under this section will be conditioned upon construction, launch and operation milestones as outlined in Section 25.144(c). The failure to meet any of the milestones contained in an authorization will result in its cancellation, unless such failure is due to circumstances beyond the licensee's control or unless otherwise determined by the Commission upon proper showing by the licensee in any particular case.

(b) Frequency assignments will be made for each satellite DARS system as follows:

(1) All licensees are limited to the allocated bandwidth of 2310-2360 MHz.

(2) [Subject to Decision -- Band Segments]

(3) [Subject to Decision -- Frequency Assignments]

(4) Each satellite DARS licensee shall reduce its assigned bandwidth occupancy by 0.1 MHz to create two (2) 0.2 MHz assignments adjacent to the edge of the allocated bandwidth for location of telemetry beacons.

(5) Each licensee may employ cross polarization within its exclusive frequency assignment and/or may employ cross polarized transmissions in frequency assignments of other satellite DARS licensees under mutual agreement with those licensees. Licensees who come to mutual agreement to use cross-polarized transmissions shall apply to the Commission for approval of the agreement before coordination is initiated with other administrations by the licensee of the exclusive frequency assignment.

## APPENDIX II

**Proposed Rules and Regulations to be Added to 47 C.F.R. Part 87 of the Commission's Rules**

## PART 87 - AVIATION SERVICES

1. The authority citation in Part 87 continues to read:

**AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.**

2. Paragraph (d)(1) of Section 87.303 is revised to read as follows:

**§ 87.303 Frequencies.**

* * * * *

(d)(1) Frequencies in the bands 1435-1525 MHz and 2360-2390 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. The bands 1525-1535 MHz and 2310-2360 MHz are also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435-1530 MHz band, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2360-2390 MHz band, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In 2310-2390 MHz band, all other telemetry and telecommand uses are secondary.

* * * * *

## APPENDIX III

### Initial Regulatory Flexibility Analysis

Reason for Action

The rulemaking is initiated to obtain comment on the proposed satellite Digital Audio Radio licensing and service rules.

Objectives

The Commission seeks to evaluate whether the proposed rules will facilitate efficient implementation of DARS in the U.S.

Legal Basis

The proposed action is authorized under Sections 1, 4(j) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(i), 154(i) and 154 (j).

Reporting, Recordkeeping and Other Compliance Requirements

Satellite DARS licensees would be required to file annual reports with the Commission.

Federal rules that Overlap, Duplicate or Conflict with These Requirements

None

Description, Potential Impact and Number of Small Entities Involved

Small businesses that do not meet the proposed financial qualifications could become involved in producing programming for DARS providers, especially in niche markets not now served by traditional broadcasting. Opportunities for leasing satellite time from DARS Satellite licensees to provide service could also be available to small businesses as well as opportunities in equipment design and manufacturing.

Any significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

This Notice solicits comments on any suggested alternatives.

**Separate Statement of**
**Commissioner James H. Quello**

**RE: Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band**

In voting to issue this NPRM, it is impossible for me not to look ahead to what could happen in several years' time: multiple new channels of radio programming, available nationwide, bringing a new richness of program diversity to underserved areas and enhancing the diversity of radio services already available in larger markets.

But at the same time, it is impossible for me not to look back at what did happen several years ago: Docket 80-90. For like the promise of satellite DARS today, in 1983 Docket 80-90 promised to bring radio program diversity to underserved areas and enhance radio program diversity in larger markets.

Was it successful in doing this? Some would say yes: others, particularly radio licensees in smaller markets, would say that the addition of FM drop-in stations weakened existing stations in some markets, lessened the amount of locally-produced and oriented programming, and led to a chase for audience that, in some ways, transformed the nature of the radio service many of us receive today.

While I do not intend to dissect the good and the not-so-good effects of Docket 80-90 here, I feel compelled to note that, for good or ill, satellite DARS has the potential to become a super high-tech 80-90. This prospect counsels that this Commission be acutely concerned with how satellite DARS may impact terrestrial broadcasters' abilities to serve the needs and interests of their local communities.

I need not explain in detail my position on the importance of free, over-the-air broadcasting in a mass media environment based on the First Amendment, diversity, and access to information for everyone in our society. Keeping this in mind, I will carefully examine evidence submitted on the record in this proceeding to ascertain satellite DARS's potential impact on the future viability of terrestrial radio. Should the evidence indicate that satellite DARS will have a substantially adverse impact on the vital local service provided by terrestrial radio, I will consider either structuring the satellite DARS rules to ameliorate this impact, or relaxing the terrestrial rules to enhance traditional radio's ability to compete with a multichannel satellite radio system. We must strike a balance between ensuring the viability of existing services and authorizing new communications services.

Additionally, I am particularly concerned about the proposals to open up the satellite DARS service to new applicants and to auction off this spectrum. While I will fully review the record before etching my position in stone, I have **very** serious

concerns about these proposals. Before us stand four applicants, who apparently are ready, willing and able to initiate DARS service just as soon as the Commission grants their applications. These applications have been before us for as long as **four years**. Public notice of these applications appeared at the time they were filed, and other parties willing to invest time, money, and entrepreneurial ability, had an opportunity to file as well. Also, Congress instituted the Commission's auction authority only after these applications were on file. Under these circumstances, it strikes me as inequitable to do anything other than exercise the discretion given us in the auction legislation and grant the current applications, which the existing allocation can completely accommodate. This is consistent with my longstanding position in other proceedings in which the Commission has faced the issue of whether to auction off applications filed prior to auction authority. *See Memorandum Opinion and Order*, Cellular Unserved Areas (License Selection Procedures), 9 FCC Rcd 7387 (1994); see also MM Docket No. 94-131 & PP Docket 93-253 (June 15, 1995) (MDS pending applications).

I look forward to the comments in this very contentious proceeding.